IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 210 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S PARMAR BROTHERS, PARTNERSHIP FIRM, OFFICE AT:-
Versus
SURYAKANTABEN LALLUBHAI [DECD.THRO. HEIRS & L.R.]

Appearance:
1. Civil Revision Application No. 210 of 1991
MR KV SHELAT for Petitioner No. 1
MR PV NANAVATI for Respondent No. 1-1/1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/09/2004

ORAL JUDGEMENT

1. This revision application is filed by the

original defendant of H.R.P.Suit No.2622/78. During the pendency of this revision, the original respondent has died and his heirs are also brought on record. The suit was filed by the original plaintiff (who is now deceased) for getting decree of possession of the suit premises on the ground that defendant is in arrears of rent and he has not paid the rent from 1.3.1978 eventhough he was served with the demand notice.

2. It is also the case of the plaintiff that the defendant is not using the suit premises without reasonable cause for more than six months prior to the filing of the suit. The said suit was resisted by the defendant on various grounds. The trial court, after recording the evidence on record, and after hearing the learned advocates appearing for the respective parties, came to the conclusion that the plaintiff has failed to prove that the defendant was in arrears of rent. The trial court also found that the plaintiff has failed to prove his case that defendant was not using the suit premises. The trial court accordingly dismissed the said suit for possession. The trial court also fixed the standard rent Rs.21/- p.m.

3. The original plaintiff thereafter filed an appeal before the Appellate Bench of Small Causes at Ahmedabad being Civil Appeal No.257 of 1982. The appellate bench came to the conclusion that, looking to the facts and circumstances and evidence on record, the plaintiff has proved his case about non-user of the suit premises. The Appellate Judge has considered the question about the non-user of the suit premises in para 8 of the judgment.

4. It is required to be noted that the suit premises was let out to the defendant for running his business. The say of the original plaintiff is that the defendant is not doing any business in the suit premises since 1977, and he has shifted his business to other shops situated in Capital Commercial Centre and Swastik Super Market, Ashram Road. The appellate judge appreciated the aforesaid oral evidence of the plaintiff and it has been found that the defendant is having two other shops and, therefore, the defendant is not using the suit premises. Even the landlord has examined independent witness one Sureshchandra Lalbhai at Exh.39 in order to corroborate his say that the suit premises were remaining closed since 1977. The said witness has stated that he has been seeing the suit premises remaining closed continuously sine March 1977, and whenever he passes through this road where the shop of the defendant is situated, he has never seen the suit premises being opened at any point of time.

5. The plaintiff has also examined another witness namely Shri Ramanlal Punamchand Shah serving in the Ahmedabad Electricity Company to prove that the electric consumption in the suit premises during the relevant period was nil, and that the suit premises had remained closed since last six months prior to filing of the suit. The appellate judge has considered this aspect in para 11 of the judgment. The appellate judge has given specific finding of the fact that the suit premises were closed from 27.1.1978 to 26.5.1978. The appellate judge has also considered the documentary evidence in the form of statements of accounts at Exh.44 which is produced by the witness from the Electricity Company which clearly shows that the premises were closed from 27.1.1978 to 26.5.1978 and no meter reading could be taken and the assessed bills were given.

6. The defendant has produced some electric consumption bills for a subsequent period but that is for the subsequent period. It has been specifically found by the appellate judge that the electric bill at Exh.50 of the suit premises shows that on 13.1.1978 the suit premises were found closed. The electric bill at Exh.51 shows that on 13.2.1978 also the suit premises were found closed. Considering the aforesaid documentary evidence as well as considering the oral evidence, the appellate court has found that, it is a clear case of non-user of the suit premises. It has been specifically found by the appellate court that the electric bills produced by the respondent - original defendant leave no room for doubt that between the period 13.12.1977 to 13.7.1978 the consumption of the electricity in the suit premises was only for 7 units for residential units and 2 units for commercial units which clearly shows that the suit premises were hardly used. Under the circumstances, the appellate judge has found that the suit premises were not used by the defendant for the purpose for which they were let out during the relevant period of six months immediately preceding the filing of the suit. If the premises is not used by the defendant for the purpose for which it is let out to him for the period of six months immediately preceding the filing of the suit, the provisions of Sec.13(1)(k) of the Bombay Rent Act can be said to be attracted immediately on the completion of six months period.

7. Considering the evidence on record, in my view, it cannot be said that the appellate court has committed any error of law which is required to be corrected by this Court in a revision under Sec.29(2) of the Bombay

Rent Act.

8. Mr.Shelat, the learned Advocate appearing on behalf of the petitioner is not in a position to attack the judgment of the appellate court and he is not in a position to state as to on what count the appellate court has committed any mistake in appreciating the evidence on record. It is also fairly conceded by the learned advocate for the petitioner that he cannot substantiate his say that provisions of sec.13(1)(k) of the Bombay Rent Act is not applicable to the facts of the present case.

9. Considering the aforesaid facts and circumstances of the case, there is no substance in this revision application. The revision application is accordingly dismissed with no order as to costs.

10. At this stage, Mr.Shelat, the learned advocate appearing on behalf of the petitioner states that, some time may be given to the petitioner to hand over the possession of the suit premises to the respondent. Mr.P.V.Nanavati, the learned advocate who is appearing on behalf of the respondent states, on instructions from his client that, if three years time is given, then his client has no objection for granting the said time.

11. Since the respondent has given concession for three years time to the petitioner, it is directed that the decree for possession may not be executed for a period of three years i.e. upto 30th September, 2007. However, the said time is granted to the petitioner on condition that, all the partners of the petitioner's firm, who are on record as on today, shall file an undertaking before this Court on or before 12th October, 2004, that the petitioner's firm is in exclusive possession of the suit premises, that the petitioner shall vacate the suit premises on or before 30th September, 2007, and that till it vacates the suit premises, it shall not transfer, sublet or alienate the suit premises to anyone in any manner. In the undertaking it should also be clearly mentioned that till the possession is handed over, it will pay mesne profit to the respondent regularly. The petitioner should also mentioned in the undertaking that without obstructing in any manner, it will handover the vacant and peaceful possession of the suit premies on or before 30th September, 2007. A copy of the undertaking may also be given to the learned advocate for the respondent. If the undertaking as stated above is not filed within the stipulated time, it will be open for the decree holder to

execute the decree forthwith. However, if such undertaking is filed, the decree for possession is not to be executed till 30th September, 2007.

12. Subject to what is stated above, this revision application is dismissed with no order as to costs. Rule is discharged.

(P.B. Majmudar, J.)

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